

February 14, 2019

Mr. Andrew Funsch
Century Engineering, Inc.
10710 Gilroy Road
Hunt Valley, MD 21031

Re: Mount de Sales Academy
Forest Conservation Variance – Specimen Trees
Tracking #01-19-2916

Dear Mr. Funsch:

A request for a variance from the Baltimore County Code Article 33 Environmental Protection and Sustainability, Title 6 Forest Conservation was received by this Department on January 28, 2019. If granted, the variance would allow removal of four (4) specimen trees in order to construct a new fine arts building at the Mount de Sales Academy campus, as well as an area for a future building and additional parking areas. The property is currently functioning as a private high school and all existing campus buildings will remain following development. The specimen trees to be removed include two 32-inch diameter-at-breast-height (DBH) scarlet oaks, a 52-inch DBH scarlet oak, and a 40-inch American sycamore, all in good condition. None of the specimen trees are within forest. There are four other specimen trees on the property that will not be impacted by construction.

The Director of the Department of Environmental Protection and Sustainability (EPS) may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of the property. The applicant is seeking to construct an additional building to an existing private high school campus, as well as install additional parking areas and designate an area for construction of a future building. Since the property is already functioning as a high school campus, full application of the law would not

deprive the applicant of all beneficial use of the property. Consequently, we find that this criterion has not been met.

The second criterion (Subsection 33-6-116 (d) (2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. The petitioner's plight is due the number and distribution of specimen trees across the site rather than general conditions of the neighborhood. Therefore, we find that the second criterion has been met.

The third criterion (Subsection 33-6-116(d) (3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The surrounding neighborhood consists of predominantly high-density single and multi-family residences as well as a public elementary school, some businesses, and a golf course. Given that this property's use as a private high school campus will not change as a result of this project, we find that the addition of the performing arts building and additional parking will not alter the essential character of this neighborhood and that this criterion has been met.

The fourth criterion (Subsection 33-6-116(e) (1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The project will not impact any streams, wetlands, floodplains, or associated buffers. Stormwater management will be designed in accordance with the current stormwater management regulations. As such, this Department finds that the proposed variance will not adversely affect water quality. Consequently, this criterion has been met.

The fifth criterion (Subsection 33-6-116(e) (2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any actions resulting in conditions or circumstances requiring this special variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code. Although four specimen trees are to be removed, no forest clearing is proposed. The applicant proposes to mitigate the removal of the specimen trees through payment of a fee-in-lieu. Moreover, the Forest Conservation Worksheet results in an afforestation requirement of 0.5 acre, which the applicant will also satisfy through payment of a fee-in-lieu of afforestation. Finally, the four specimen trees to remain will be protected during construction in accordance with an approved Forest Conservation Plan. Therefore, we find that this variance is consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code and that this criterion has been met.

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Based on our review, this Department finds that all required variance criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code with the following conditions:

1. Mitigation for the removal of the two 32-inch DBH scarlet oaks, the 52-inch DBH scarlet oak, and the 40-inch DBH American sycamore shall be addressed by payment of a \$6,170.57 fee-in-lieu prior to EPS approval of any grading or building permit. The check must be made payable to Baltimore County.
2. A final Forest Conservation Plan detailing the protection of the remaining specimen trees shall be approved by EPS prior to grading plan or permit approval.
3. The following note must be on all subsequent plans for this development project:

“A variance was granted on February 14, 2019 by Baltimore County Dept. of Environmental Protection and Sustainability to remove four specimen trees. Conditions were placed on this variance to ensure that the spirit and intent of the Forest Conservation Law were met, including payment of a fee-in-lieu of mitigation.”

This variance approval does not exempt future development activities or future removal of specimen trees at this site from compliance with Baltimore County’s Forest Conservation Law.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the party responsible for meeting the conditions of this variance sign the statement below and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please call Ms. Libby Errickson at (410) 887-3980.

Sincerely yours,

David V. Lykens
Acting Director

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DVL/lbe

- c. Mr. Thomas Walter, Mount de Sales Academy
Ms. Marian Honeczy, Maryland Department of Natural Resources

I/we agree to the above conditions to bring my/our property into compliance with
Baltimore County's Forest Conservation Law.

Owner's Signature

Date

Printed Name